

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ERICA CARDENAS,

Plaintiff,

v.

INFUSION CAPITAL GROUP LLC,

Defendant.

Case No. 1:25-cv-01386-JMF

CLASS ACTION

**PLAINTIFF’S MOTION FOR LEAVE TO TAKE
DISCOVERY AND EXTEND MOTION FOR DEFAULT JUDGMENT DEADLINE**

Plaintiff Cardenas seeks leave from the Court authorizing Plaintiff to take discovery to identify members of the Class and determine the amount of damages they are entitled to in advance of seeking entry of class certification and default judgment, and moves to extend the deadline to file her motion for default judgment. In support, Plaintiff states:

1. Plaintiff filed her Complaint on February 18, 2025. ECF No. 1. Plaintiff served Defendant on March 20, 2025. ECF No. 6. Accordingly, Defendant’s response to the Complaint was due by April 10, 2025. *See* Fed. R. Civ. P. 12(a)(1)(A)(i).

2. Pursuant to Federal Rule 55(d)(2): “The court may conduct hearings or make referrals—preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to: (A) conduct an accounting; (B) determine the amount of damages; (C) establish the truth of any allegation by evidence; or (D) investigate any other matter.”

3. “[A] defaulted defendant is deemed to admit the plaintiff’s well-pleaded allegations of fact,” including specifically allegations relating to the prerequisites for class certification under Federal Rule 23. *Amadi v. Ace Homecare, LLC*, No. 8:17-cv-02191-T-02JSS,

2019 U.S. Dist. LEXIS 52375, at *3-4 (M.D. Fla. Mar. 28, 2019) (internal annotations and citations omitted) (a defaulted defendant “is not held to admit facts that are not well-pleaded or to admit conclusions of law”); *Duncan v. Sabal Palms I Assocs., Ltd.*, No. 89-3 CIV-FtM-10(A), 1990 U.S. Dist. LEXIS 21077, at *2-7 (M.D. Fla. June 7, 1990) (certifying class action based on the plaintiff’s allegations in the complaint that were, in effect, admitted by the defaulted defendant). However, discovery is needed to identify recipients of Defendant’s TCPA violative prerecorded calls, and to determine the total number of calls each Class member received so that statutory damages of \$500 per call can be determined on a Classwide and per Class member basis.

4. Accordingly, Plaintiff requests leave to take discovery to identify members of the Class and to determine damages as contemplated by Rule 55(d)(2). Specifically, Plaintiff seeks to serve discovery on Defendant and any third parties involved in making the violative calls, in an effort to obtain call logs from them. *See Martie v. M&M Bedding, LLC*, Case No. 2:20-cv-43, Dkt. 13 (M.D. Fla. May 18, 2020) (granting leave to take discovery as to the identity of putative class members and determine the amount of damages they are entitled to in advance of seeking class certification and a default judgment).

5. To allow adequate time to conduct discovery prior to moving for class certification and default judgment, Plaintiff requests that she be permitted 90 days within which to conduct discovery and move for class certification and default judgment on behalf of herself and the class.

WHEREFORE, Plaintiff requests that the Court grant leave to take discovery, and extend the deadline to move for default judgment for 90 days to allow time for discovery and a motion for class certification.

Dated: May 9, 2025

Respectfully submitted,

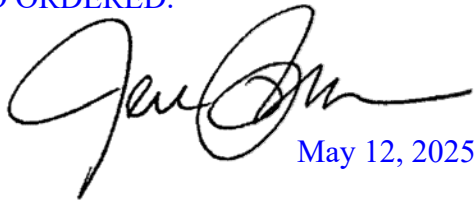
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Attorneys for Plaintiff and the putative Classes

Application GRANTED. Plaintiff's deadline to file any motion for default judgment, the contents of which is described in the Court's April 25, 2025 Order, ECF No. 8, is hereby EXTENDED to **August 7, 2025**. The Clerk of Court is directed to terminate ECF No. 9.

SO ORDERED.



May 12, 2025